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## GENERATION PRODUCTS SDN BHD

v.

## MAJLIS PERBANDARAN KLANG

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FEDERAL COURT, PUTRAJAYA
ZAKI TUN AZMI PCA
ABDUL AZIZ MOHAMAD FCJ
ZULKEFLI MAKINUDIN FCJ
[CIVIL APPEAL NO: 02-15-2007(B)]

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18 JULY 2008

***LOCAL GOVERNMENT:*** *Rates - Arrears of assessment - Fees charged on a six-month basis on sums outstanding - Whether may be imposed only once and not from time to time - Local Government Act 1976, ss. 133, 147(1)*

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***WORDS & PHRASES:*** *"from time to time" - Local Government Act 1976, s. 147(1) - Reference to in respect of imposition of fee*

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The appellant had by way of auction purchased two pieces of properties located within the local authority of the respondent. After acquiring the properties, the appellant discovered that the rates payable under s. 133 of the Local Government Act 1976 ('Act') for the two properties had been in arrears since 1985. The respondent gave notice to the appellant to pay up, imposing upon

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the appellant "fees" of 2% for every amount unpaid on a half yearly basis and in 1992, the fees were increased to 10%. The appellant took out an originating summons to challenge the imposition of the fees which were charged on a six-month basis on sums outstanding to the respondent. According to the

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appellant, the fees may be imposed only once (and not from time to time) and they must be towards the cost of collection of the arrears of rates due to the respondent and not treated as a penalty. The High Court found for the appellant but the Court of Appeal reversed that decision upon appeal. The appellant then

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sought and was granted leave to refer the following question to the Federal Court: Whether the words "from time to time" in s. 147(1) of the Act refers to the fee that may be changed from time to time in an individual case for so long as the rates remained unpaid or a fixed rate applicable to all ratepayers who have not

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paid the rates thereby making the fee chargeable only once or to both.

**Held (allowing the appeal)**
**Per Zaki Tun Azmi PCA delivering the judgment of the court:**

**(1)** Section 147 of the Act imposes a liability on the owner of a holding to pay the fee if the rate for the first half of the year as required by s. 133 of the Act is not paid before the end of February. The same applied in respect of the rate for the second half of the year if it is not paid before the end of August, and so on. As for the words "from time to time", they must necessarily qualify the words "such fee as the local authority may fix", meaning that the local authority is allowed to alter the amount of the fee from time to time. The words "from time to time" cannot refer to the imposition of the fee because that is already fixed to be paid at the end of February or at the end of August. Therefore, in respect of a particular rate that is not paid in time, the fee can be imposed only once. That was the answer to the question in this appeal. For example, a rate that is due and not paid in February is subject to a fee but if the same rate remains in arrears in August, the authority cannot then impose a second fee on the rate that was due in February. (para 42)

***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu telah secara lelong membeli dua bidang hartanah yang terletak di dalam autoriti tempatan responden. Setelah membeli hartanah tersebut, perayu menyedari bahawa cukai taksiran di bawah s. 133 Akta Kerajaan Tempatan 1976 ('Akta') untuk kedua-dua hartanah tertunggak sejak 1985. Responden memberi notis kepada perayu untuk membayar, dan mengenakan perayu "fee" sebanyak 2% untuk setiap amaun yang tidak dibayar berdasarkan setiap setengah tahun dan pada tahun 1992, fee dinaikkan kepada 10%. Perayu mengeluarkan saman pemula untuk menentang pengenaan fee yang dikenakan berdasarkan setiap enam bulan ke atas jumlah yang belum dibayar kepada responden. Mengikut perayu, fee hanya boleh dikenakan sekali (dan bukan dari masa ke semasa) dan mesti terhadap kos kutipan tunggakan cukai taksiran yang patut diberi kepada responden dan tidak dianggap sebagai suatu penalti. Mahkamah Tinggi memutuskan bagi pihak perayu tetapi Mahkamah Rayuan menolak keputusan tersebut apabila rayuan dibuat. Perayu meminta dan menerima kebenaran untuk merujuk soalan berikutnya kepada Mahkamah Persekutuan:

Sama ada perkataan-perkataan "dari masa ke semasa" dalam s. 147(1) Akta rujuk kepada fee yang boleh diubah dari masa ke semasa di dalam kes individu selama cukai taksiran masih tidak dibayar atau suatu cukai taksiran tetap yang dikenakan terhadap semua pembayar cukai taksiran yang tidak membayar cukai taksiran tersebut dan dengan itu membuat fee yang dikenakan hanya sekali atau kepada kedua-duanya.

**Diputuskan (membenarkan rayuan)**
**Oleh Zaki Tun Azmi PMR menyampaikan penghakiman mahkamah:**

**(1)** Seksyen 147 Akta mengenakan liabiliti terhadap pemilik suatu bangunan untuk membayar fee jika cukai taksiran untuk separuh pertama tahun seperti yang diperuntukkan oleh s. 133 Akta tidak dibayar sebelum penghujung Februari. Begitu juga berhubung dengan cukai taksiran untuk separuh kedua tahun jika ia tidak dibayar sebelum penghujung Ogos, dan selanjutnya. Bagi perkataan-perkataan "dari masa ke semasa", mereka seharusnya membataskan perkataan-perkataan "fee yang autoriti tempatan mungkin tetapkan", bermakna bahawa autoriti tempatan dibenarkan mengubah amaun fee dari masa ke semasa. Perkataan-perkataan "dari masa ke semasa" tidak boleh rujuk kepada pengenaan fee kerana ia telahpun ditetapkan untuk dibayar pada penghujung Februari atau penghujung Ogos. Oleh itu, berkenaan dengan cukai taksiran yang tidak dibayar dalam masa yang ditentukan, fee hanya boleh dikenakan sekali sahaja. Itulah jawapan kepada soalan di dalam rayuan ini. Sebagai contoh, suatu cukai taksiran yang patut dibayar dan tidak dibayar pada Februari tertakluk kepada suatu fee tetapi jika cukai taksiran yang sama masih tertunggak pada Ogos, autoriti tersebut tidak boleh kenakan fee kedua ke atas cukai taksiran yang patut dibayar pada Februari.

**Case(s) referred to:**
*Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1947] 2 All ER 685* ***(refd)***
*Farrell v. Alexander [1976] 2 All ER 721* ***(refd)***
*Mitchell v. Simpson [1890] 25 QBD 183* ***(refd)***
*National Land Finance Co-operative Society Ltd v. Director General of Inland Revenue [1993] 4 CLJ 339 SC* ***(refd)***
*Padfield v. Minister of Agriculture and Fisheries [1968] 1 All ER 694* ***(refd)***

**Legislation referred to:**
Federal Constitution, art. 76(4)
Local Government Act 1976, ss. 127, 128, 133, 146, 147(1), (2), 148(4), 150
National Language Act 1967, s. 2
Town Boards Enactment of Selangor, s. 46(i)

**Other source(s) referred to:**
*Craies on Statute Law*, 4th edn, p 305
NS Bhindra, *Interpretation of Statutes,* 9th edn (2002), p 1509

*For the appellant - DP Vijandran; M/s Gill & Tang*
*For the respondent - Lee Cheng Theng; M/s Fernandez & Co*

*Reported by Suresh Nathan*

## JUDGMENT

### Zaki Tun Azmi PCA:

### Introduction

**[1]** The respondent is the local authority of Majlis Perbandaran Klang and the appellant is an owner of two pieces of properties located within the local authority of the respondent. The appellant had by way of an auction purchased the said properties on 4 July 1994. These properties are known as Lot Nos. 6124 and 6127. After acquiring the properties it discovered that the rates for the two properties had not been paid since 1985. The rates which are payable under s. 133 of the Local Government Act 1976 had been in arrears since 1985. The appellant received a notice from the respondent to pay up. By the same notice, the respondent imposed upon the appellant "fees" of 2% for every amount unpaid on a half yearly basis and in 1992 the fees were increased to 10%.

**[2]** The appellant challenged the imposition of the fees which are charged on a six monthly basis on sums remaining outstanding to the respondent. According to the appellant the fees may be imposed only once (and not from time to time) and they must be towards the cost of collection of the arrears of rates due to the respondent and not to be treated as a penalty. The fact that the so-called fees imposed pursuant to s. 147, are intended to be a penalty is never denied by the respondent. In fact its contention

A is that the "fees" are imposed to encourage property owners to pay up their rates early. Even the bills sent by the respondent to property owners refer to these charges as "denda lewat" ("late payment penalty").

B **[3]** The appellant took out an originating summons to challenge the imposition of these fees. It sought declarations and the following declarations were made by the High Court:

(a) bahawa konstruksi yang benar untuk Seksyen 147(1) Akta Kerajaan Tempatan 171 cukai taksiran yang harus dibayar
C untuk setengah tahun secara pendahuluan mengikuti Seksyen 133 (jika ada), baki yang belum dibayar pada akhir bulan Februari atau Ogos seperti mana keadaan itu adalah tertakluk hanya sekali untuk fee yang ditetapkan oleh autoriti tempatan, di mana baki yang belum dibayar boleh dikutip
D mengikuti Seksyen 148 Akta tersebut;

(b) bahawa ia juga adalah 'Ultra Vires' untuk autoriti tempatan mengenakan satu penalti lewat mengikut peratus kadar yang belum dibayar sebagai fee di bawah Seksyen 147(1) Akta tersebut;

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(c) bahawa 'fee' tersebut yang mungkin ditetapkan oleh autoriti tempatan dari masa ke semasa di bawah Seksyen 147(1) mesti mewakili kos untuk perkhidmatan-perkhidmatan lebih jika ada dikenakan dan bukan secara sewenang-wenangnya;

F (d) bahawa mengikut Seksyen 148 apabila Waran untuk penahanan dikeluarkan untuk mendapat balik tunggakan, 'fee' yang autoriti tempatan boleh tetapkan dari masa ke semasa mesti mewakili kos yang sebenar untuk penahanan yang dialami dan bukan berdasarkan pada kuantum atas tunggakan
G dan juga tidak patut dalam mana keadaan pun melebihi fee penahanan untuk hartanah yang dikenakan oleh Pejabat Sherif di bawah Kaedah-Kaedah Mahkamah Tinggi 1980 dan 'Courts of Judicature Act 1964'; dan

(e) bahawa ia adalah 'Ultra Vires' dan menyalahi undang-undang
H untuk autoriti tempatan untuk mengakru cukai taksiran yang belum dibayar dan mengenakan pada jumlah terakru tersebut pada akhir bulan Ogos kadar sebanyak 10% sebagai penalti lewat.

(f) bahawa cukai Notis Taksiran untuk tahun 1992 hingga 1994
I dibatalkan dan tidak sah.

**[4]** The respondent appealed to the Court of Appeal which reversed the decision of the High Court. The Court of Appeal held that the learned trial judge erred in allowing the application by the appellant. On this issue of the legality of imposition of penalty, the Court of Appeal in its judgment accepted the arguments of the respondent that the charges by the respondent are penalties and because they are penalties, the court ruled that it is right that the charges be imposed from time to time.

## The Question In This Appeal

**[5]** The appellant sought and was granted leave to refer the following question to the Federal Court:

> Whether the words "from time to time" in section 147(1) of the Local Government Act 1976 refers to the fee that may be **charged from time to time** in an individual case for so long as the rates remained unpaid or a **fixed rate** applicable to all rate payers who have not paid the rates thereby making the fee chargeable only once or to both. (emphasis added)

**[6]** That question could be broken up as follows:

> Whether the words "from time to time" in s. 147 of the Local Government Act 1976 refer to:
>
> (a) the fee that may be charged from time to time in an individual case for so long as the rates remained unpaid, or
>
> (b) a fixed rate applicable to all rate payers who have not paid rates thereby making the fee chargeable only once, or
>
> (c) to both the above.

**[7]** In the context of question (a), the words "from time to time" would mean that the local authority may charge the fees every six months on amounts left unpaid. On the other hand, the interpretation to be given to the words "from time to time" in the context of question (b) would mean that those words merely empower the local authority to change from time to time the amount of fees chargeable. Question (c) of course means that the local authority can do both.

**[8]** Public authorities are set up and derive their powers from statutes and that is why they are sometimes referred to as statutory bodies. The Act of Parliament would spell out their powers and more often than not Parliament also delegates powers to the Minister to make rules and regulations relating to implementation of that power. It is therefore trite law that a statutory body or authority has to look at the relevant provisions of the Act to determine its powers. The court will then in turn examine the impugned provision to decide whether the authority has acted within its powers. The court's duty is to ensure that these powers are exercised properly and within the prescribed terms. Lest it is misunderstood, there is also an immense variety of administrative powers which are non-statutory eg, formulation and implementation of government policies.

**[9]** In some instances, the purpose or objectives of a provision are not clearly spelt out and courts must study other provisions of the relevant legislation in order to determine what the objective or the purpose of the provision is. The authorities cannot utilize their power conferred for one purpose towards achieving another purpose. It can only be used to achieve the end for which it is intended and not a related end. The exercise of a power towards an end which is outside the scope which is intended for it will be declared a nullity and struck down by the courts. When the law confers a power in broad terms, the court will examine whether the exercise of that power falls within the purpose for which it is intended. (See *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1947] 2 All ER 685)

**[10]** When it comes to assessing whether the authority has exercised its power for any improper purpose, the motive of exercising the power is irrelevant. Unlike cases where the exercise of power is challenged on grounds of *mala fide*, when personal spite, animosity, malice, fraud, corruption or dishonesty becomes relevant. In respect of the earlier instance, however, even if the authority has the best of intentions, if its act falls outside the scope of the power conferred upon it, the exercise of power is deemed *ultra vires* and therefore liable to be declared void. (See *Padfield v. Minister of Agriculture and Fisheries* [1968] 1 All ER 694). The fact that the statute uses very general words does not mean that the exercising authority has the power that it claims. The court has to look at the objective and purpose of the law.

**[11]** So whether the action of the respondent to invoke s. 147 to impose penalties from time to time against persons who are in arrears of their rates in order to encourage them to pay their rates on time is lawful or not depends on the interpretation of s. 147.

**[12]** Sections 147(1) and 147(2) read as follows:

> (1) If any sum payable in respect of any rate remains unpaid at the end of February or August, as the case may be, the owner or owners shall be liable to pay the same together with such fee as the local authority may fix from time to time.
>
> (2) If any such sum or any part thereof remains due and unpaid by the end of February or by the end of August in each year, as the case may be, it shall be deemed to be an arrear and may be recovered as provided in section 148.

It is to be noted that those two sub-sections are almost identically worded except that while sub-section (1) deals with imposition of fee for late payment of rates, sub-section (2) deals with recovery of outstanding arrear of rates.

**[13]** The effect of this provision read with s. 133 is that the owner of the holding is given one month grace before the fee under s. 147(1) can be imposed by the local authority.

**[14]** Section 127 is the provision that empowers the local authority to impose rates and s. 128 specifically refers to drainage rate. Section 148 provides for the manner of recovery of arrears of rates and s. 150 the imposition of interest on the arrears of rates.

**[15]** Section 127 reads:

> The local authority may, with the approval of the State Authority, from time to time as is deemed necessary, impose either separately or as a consolidated rate, the annual rate or rates within a local authority area for the purposes of this Act or for other purposes which it is the duty of the local authority to perform under any other written law.

**[16]** In order to understand the significance of the months February and August mentioned in the two subsections of s. 147, it is necessary to refer to s. 133 which provides as follows:

> The rates referred to in sections 127 and 128 shall endure for any period not exceeding twelve months and **shall be payable half-yearly in advance** by the owner of the holding at the office of the local authority or other prescribed place **in the months of January and July** and shall be assessed and levied in the manner hereinafter provided. (emphasis added)

**[17]** It would be interesting to note the effect of the words "owners of the holdings for the time being" in s. 146. Section 146 provides:

> All rates shall be paid by the persons who are the owners of the holdings for the time being, and until so paid shall, subject to the provisions of the National Land Code, be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed.

Do they mean that only owners of the property at the time the rates are imposed become liable for the rates? Since the rates in this case are in respect of the property during the period when the applicant was not the owner of the holdings then is he liable for that rate? I do not propose to deal with this issue as it is not part of the question at hand.

**[18]** There was a lengthy argument of the meaning of the word "fee". According to the appellant "fee" is a payment made in return for services rendered. Counsel for the local authority however referred to the Bahasa Malaysia text of the Local Government Act 1976 and drew our attention to the equivalent of "fee" in Bahasa Malaysia. The word used in the corresponding section of the Bahasa Malaysia text is "bayaran". To him, precedence on interpretation of the word "fee" therefore cannot be used for the purpose of interpreting the word "fee" in s. 147. He also contended that since what is imposed by the respondent is for payment, then that "payment" is "bayaran" and not "fee".

**[19]** It is also relevant to the interpretation to note that, according to s. 150, interest at the rate of 6% per annum as well as cost of recovery can be set off from the proceeds of sale of the seized movable properties. However, that section does not mention from when the interest is chargeable.

**[20]** If the intention of s. 147 is to impose a penalty for late payment of rates, I think the legislators would have said so in so many words.

**[21]** The Court of Appeal accepted the fee as a penalty. All along in its judgment it referred to the fee as a penalty. It concluded:

> The Respondent (the Appellant here) contended that the penalty should remain the same throughout because it was imposed on the rate and that the penalty should only be once. We agree with the Appellant that, if the contention of the Respondent is to be accepted, then the penalty is meaningless and not be a deterrent because the penalty once imposed on the rate would remain the same. The whole idea of imposing the penalty is to be a deterrent.

**[22]** The Court of Appeal's acceptance that the fee imposed under s. 147 is meant to be a penalty would seem to follow the interpretation given by the respondent since the invoices to property owners described the fee as "denda lewat". The notice "Borang E" (the invoice) issued by the respondent reminding owners of properties to pay their rates also uses the term "denda lewat" to indicate the fee imposed pursuant to s. 147.

**[23]** Amongst the arguments put forward by the appellant is that the impugned s. 147 is in fact a replica of s. 46(i) of the Town Boards Enactment which reads as follows:

> If any sum payable in respect of any rate remains unpaid at the expiration of the prescribed time a notice, substantially in the Form A in the schedule, shall be served on the person or any one of the persons, if more than one, liable to pay the same, calling on him to pay the same together with such fee as the Ruler in Council may fix from time to time for **cost of the notice** within fifteen days of the service of such notice: Provided that a separate notice shall be issued in respect of each holding or in the case of holdings included in a joint valuation one notice in respect of all such holdings. (emphasis added)

**[24]** It is not denied that the wording in s. 147 seems to be a copy of s. 46 except that the purpose for the imposition of the fee is mentioned in s. 46. Section 46 provides that the fee shall be "for cost of the notice". The appellant therefore contends that since s. 46 spells out the reason for collection of such fee and that s. 147 of the Local Government Act is a re-enactment, the fee imposed under the new s. 147 must also be read as fee for cost of issuing the notice.

**[25]** When a consolidating Act re-enacts in an orderly form the various statutes embodying the law on the subject, cases have shown that courts, would in certain circumstances, apply the same meaning to the words as had been attached to them by earlier judicial decisions (see *Mitchell v. Simpson* [1890] 25 QBD 183). It also depends on the way the consolidation Act is drafted. In appropriate cases, reference may be made to the repealed provision for the purpose of interpreting the re-enacted provision. Consolidation is the combination in a single legislation of all statutes relating to one subject matter. According to *Craies on Statute Law,* 4th edn at p. 305, consolidation is a reduction into a systematic form of the whole of the statute law relating to a given subject. This is what the Local Government Act 1976 did by consolidating the Town Board Enactments. In fact, the explanatory statement of the Local Government Bill states that it was intended to consolidate into one legislation all duplicating enactments that are found in the various Town Board Enactments applied to the various States of Semenanjung Malaysia. They relate to local government. According to the long title of the Act, the Act is "... to **revise** and consolidate the laws relating to local government." (emphasis added). The Commissioner of Law Revision is empowered to revise legislation but in the case of the Local Government Act 1976 it was re-enacted and passed by Parliament as a new Act altogether pursuant to art. 76(4) of the Federal Constitution for ensuring uniformity of law and policy.

**[26]** Although the introductory words to s. 46 of the Town Boards Enactment of Selangor and s. 147 of the Local Government Act are practically identical, we need not refer to s. 46 of the Town Boards Enactment for the purpose of interpreting s. 147 of the Local Government Act. It is therefore not necessary to conclude that s. 147 of the Local Government Act is intended to have the same meaning and object as that intended in the repealed s. 46 of the Town Boards Enactment. Lord Simon of Glaisdale in *Farrell v. Alexander* [1976] 2 All ER 721 explained at p. 733:

> All consolidation Acts are designed to bring together in a more convenient, lucid and economical form a number of enactments related in subject-matter (and often by cross-reference) previously scattered over the statute book. All such previous enactments are repealed in the repeal schedule of the consolidation Act. It follows that, once a consolidation Act has been passed which is relevant to a factual situation before a court, the 'intention' of Parliament

> as to the legal consequences of that factual situation is to be collected from the consolidation Act, and not from the repealed enactments. It is the relevant provision of the consolidation Act, and not the corresponding provision of the repealed Act, which falls for interpretation.

The word "fee" in s. 147 must therefore be read as part of a new Act and its interpretation be given in the context of the Act in which it is found.

**[27]** The respondent on the other hand argued that the interpretation of the word "fee" in s. 147 must be based on the authoritative Bahasa Malaysia text which uses the word "bayaran" as equivalent to "fee" and therefore authorities on the meaning of "fee" are not relevant.

**[28]** Language as a medium of communication grows from time to time and our Bahasa Malaysia is no different. Unfortunately for Bahasa Malaysia, unlike the ancient Egyptian hieroglyphics, there is no Rosetta Stone. For Bahasa Malaysia, linguistics have to build this language. In any language new words are from time to time introduced and new meanings attached to existing words such as, in computer language, the words "laptop", "burn", "desktop", etc. This is more so when our national language is a very young language as compared to English. Our national policy, as with all independent sovereign nations, requires that we have our own national language. Towards this end, the National Language Act 1967 was enacted to require all laws to be made in two languages, English and Bahasa Malaysia. According to s. 2 of the National Language Act 1967 (Act 32), unless otherwise provided, the Bahasa Malaysia text becomes the authoritative text. Bahasa Malaysia will be developed. In so doing, we have no alternative but to borrow words from other languages, particularly English and Arabic, because, of all foreign languages, they have been the closest in association with us – English, because this country was under the rule of the British and Arabic, through the introduction of Islam. This also resulted in our dictionaries published at different times having different translations for the same word.

**[29]** This instant case is a good example. Earlier legislations seem to use the word "bayaran" as meaning "fee". However, subsequently, as can be seen below, the word "fee" is translated into Bahasa Malaysia as "fi" or "fee". "Fee" according to the *Concise Oxford English Dictionary,* 11th edn (revised) (2006), as a noun means:

A a payment made to a professional person or to a professional or public body in exchange for advice or services.

**[30]** I looked up the First Edition 1991 of the Kamus Inggeris/ Melayu Dewan (An English-Malay Dictionary) published by Dewan Bahasa dan Pustaka. According to that dictionary, "fee" is defined as follows:

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Fee n payment, bayaran; (made at regular intervals) yuran: lawyers' ~s, bayaran perkhidmatan peguam; …

C **[31]** The 3rd edn (1997) of the *Kamus Dewan* (also published by Dewan Bahasa dan Pustaka) does not provide for the word "fee" or "fi". However, the subsequent 4th edn published in 2007 provides the meaning of "fi" as follows:

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fi (Udg) bayaran yang dikenakan bagi sesuatu perkhidmatan atau nasihat profesional, spt khidmat guaman, perancangan dsb.

**[32]** The word "fee" used in the English text of the legislations over the years, does not seem to be consistent in meaning when we look at the equivalent in Bahasa Malaysia. This is clearly E reflected from the legislations. The word "fee" would be found in legislations relating to services. Some of the examples are as follows:

| **Legislations** | **Bahasa Malaysia Term** |
|---|---|
| F Second Schedule of the Companies Act 1965 (Act 125) – P.U.(A) 79/93 | Fee |
| Section 4, Statutory Declarations G Act 1960 (Act 13) (Revised 1969) | Bayaran (w.e.f. 14.4.1970)<br>Fi (w.e.f. 14.4.1972) |
| H Section 18, Private Agencies Act 1971 (Act 27) | Bayaran (w.e.f. 30.4.1971)<br>Bayaran (published 1999)<br>I Fi (published 2006) |

| | |
|---|---|
| Section 35, Housing Trust Act 1950 (Act 18) (Revised) (Repealed by the Housing Trust (Dissolution) Act 1970 [Act 339]) | Bayaran (w.e.f. 11.1.1971) |
| Perintah 2, Perintah Bank dan Institusi-institusi Kewangan (Fee Tahunan bagi Pejabat)(Syarikat-Syarikat Kewangan Berlesen, Syarikat-Syarikat Diskaun Berlesen dan Broker-Broker Wang Berlesen) 1989 – P.U.(A) 288 | Fee (w.e.f. 26.9.1989) |
| Order 2, Banking and Financial Institutions (Scheduled Institutions) (Fees) Order 1989 - P.U.(A) 442 | Fee (w.e.f. 27.12.1989) |
| Section 24B, Civil Aviation Act 1969 (Act 3) | Fi (w.e.f. 27.2.1969) |

We can conclude from there that the Bahasa Malaysia term "bayaran" does not necessarily mean payment. It can also mean fee, depending on the context in which it is used.

**[33]** Now back to s. 147. The Bahasa Malaysia text of s. 147 uses the following expression:

> ... pemunya atau pemunya-pemunya adalah bertanggungan membayar jumlah wang itu bersama dengan apa-apa **bayaran** yang ditetapkan oleh pihak berkuasa tempatan dari semasa ke semasa. (emphasis added)

**[34]** But it is also important to refer to s. 148(4) and note the context in which the word fee is used in that subsection. That subsection reads as follows:

> The **fee** for a warrant of attachment shall be of such amount as the local authority may fix from time to time **and shall be costs of the attachment.** (emphasis added)

In Bahasa Malaysia, it reads:

> **Bayaran** bagi waran tahanan ialah sebanyak yang ditetapkan oleh pihak berkuasa tempatan dari semasa ke semasa **dan adalah menjadi kos tahanan itu.** (emphasis added)

The fee imposed under this subsection is for service and the amount fixed is the cost of attachment. By the way, note also the context in which the expression "from time to time" is used.

**[35]** In determining the intention of the legislature in using "fee" in s. 147, I quote the following views expressed by N.S. Bhindra in his book *Interpretation of Statutes,* 9th edn (2002), at p 1509:

> The use of the word 'fee' in an Act is not decisive of the question whether the legislature intended to confer power to levy a fee in the strict sense and not a tax. Cases may arise where under the guise of levying a fee. *(sic)* Legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power courts would have to scrutinize the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy, or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, whether or not *(sic)* particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case.

Having this said, I am drawn to the House of Lords judgment of Lord Simon of Glaisdale, in *Farrell v. Alexander* [1976] 2 All ER 721, at pp. 735-736, where he discussed the question of reading the statute in the correct context:

> Since the draftsman will himself have endeavoured to express the parliamentary meaning by words used in the primary and most natural sense which they bear in that same context, the court's interpretation of the meaning of the statutory words used should thus coincide with what Parliament meant to say.
>
> …
>
> The first or 'golden' rule is to ascertain the primary and natural sense of the statutory words in their context, since it is to be presumed that it is in this sense that the draftsman is using the words in order to convey what it is that Parliament meant to say. They will only be read in some other sense if that is necessary to obviate injustice, absurdity, anomaly or contradiction, or to prevent impediment of the statutory objective. It follows that **where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning.** (emphasis added)

**[36]** It is therefore evident that although the word used in s. 147 in the Bahasa Malaysia text is "bayaran", the intention of the draftsman was to impose a fee. I am therefore inclined to believe that should the Local Government Act be revised hereafter, the word "bayaran" in the Bahasa Malaysia text would be replaced with the word "fee" (or "fi"). Since what is chargeable under s. 147 is a fee, it must follow that the amount charged under s. 147 is for services rendered.

**[37]** Section 147 also cannot be construed as intending to impose a penalty because the following s. 148 provides for the manner by which unpaid arrears of rates can be recovered. They are recoverable from seizure and sale of movable properties belonging to the owner who is liable to pay the rates found anywhere within the local authority area and any movable property belonging to anybody, not necessarily the owner, found on the property which is subject to the rates.

**[38]** Rates chargeable by the local authority are no doubt a form of tax. Section 147(1) is a provision of tax and therefore must be read strictly. In the case of *National Land Finance Co-operative Society Ltd v. Director General of Inland Revenue* [1993] 4 CLJ 339, Gunn Chit Tuan, CJ (Malaya) said:

> There are ample authorities to show that courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists. In *Re Micklewait* [1855] 11 Exch 452 it was held that a subject was not to be taxed without clear words.

**[39]** The provision that imposes tax (local authority rates are but one example) confers power on the relevant authority to recover the expenses incurred by the local authority for the services rendered. When a person who is subjected to such tax fails to pay the tax, a penalty may be enforced against him and he has to be penalized for that failure. However in this case, he should not (without clear and unambiguous words) be penalized by having to pay the so-called fee. The Act provides three ways of ensuring recovery of the rates, *viz.* the fee, proceeds of seizure and 6% interest as compensation for late payment.

**[40]** Such fee must therefore be intended to address the cost incurred for issuing reminders, if any, due to delayed payment of rates. Therefore, the fees under s. 147 are included in the legislation for the purpose of recovering the expenses borne by the

authority. It must be intended for recovery of the cost of, for example, having to check the unpaid bills and sending out notices. That being the intent, cost for that service rendered cannot be on percentage basis. This is because resort to a percentage basis may result in a great difference in the cost between one case and another, but whether the amount of the rate is big or small the cost of checking and issuing notices cannot be that much different.

**[41]** Although I seem to have strayed away from the issue of "from time to time", in fact that is not so. If it is accepted that such fee is for the purpose of indemnifying the local authority for its expenses incurred in issuing notices to remind and to collect the arrears of unpaid rates, then such sum will inevitably increase with, if not anything else, inflation. It can therefore be increased or otherwise varied from time to time. Hence the use of the words "from time to time" in s. 147. These words therefore only connote the ability to increase the fees whenever the cost for services increases (or to reduce when circumstances so require). However, in my opinion such cost must be a fixed sum and not based on percentage as the respondent had done in this case. If on the other hand such fee under s. 147 is intended to be a penalty (which in my opinion above, it cannot be) then of course the amount could be by way of percentage. Imposition of penalty by percentage is nothing new as failure to pay income tax will attract a penalty and such penalty is normally by percentage.

**[42]** I would read s. 147 as imposing a liability on the owner of a holding to pay the fee if the rate for the first half of the year as required by s. 133 is not paid before the end of February. The same applies in respect of the rate for the second half of the year if it is not paid before the end of August. And so on. As for the words "from time to time", they must necessarily qualify the words "such fee as the local authority may fix". At the expense of repetition, they mean that the local authority is allowed to alter the amount of the fee from time to time. The words "from time to time" cannot refer to the imposition of the fee because that is already fixed to be paid at the end of February or at the end of August. Therefore, in respect of a particular rate that is not paid in time, the fee can be imposed only once. That is the answer to the question in this appeal. For example, a rate that is due and not paid in February is subject to a fee but if in August the same rate remains in arrear then the authority cannot impose a second fee on the rate that was due in February.

## Conclusion

**[43]** Consequently, I allow this appeal and set aside the order made by the Court of Appeal with costs. Deposit is refunded to the appellant. The relevant notices of assessment are declared null and void and the respondent may issue fresh notices of assessment, correctly computed as regards the fee.

**[44]** Both my learned brothers Abdul Aziz Mohamad FCJ and Zulkefli Ahmad Makinudin FCJ have read this judgment and agreed with it.